

Senate Bill 13-221

Concerning an Application and Review Process for Issuing Tax Credit Certificates for a State Income Tax Credit Allowed for the Donation of a Perpetual Conservation Easement

Legislation Resulting from a Performance Audit of the
Conservation Easement Tax Credit Program (Recommendation No. 11, Page 80)

Why Is This Bill Necessary?

The State foregoes a significant amount of annual tax revenue to incentivize land conservation. The Office of the State Auditor's October 2012 performance audit of the conservation easement tax credit program demonstrated that more changes need to be made to strengthen the administration of Colorado's conservation easement tax credit to ensure that tax credits being claimed and used by taxpayers are supported by qualified appraisals and are being granted for valid conservation purposes.

One of the key findings in the audit report is that the State should fundamentally shift the manner in which the conservation easement tax credit is administered by requiring that certain aspects of a conservation easement donation be reviewed and approved by the Division of Real Estate and the Conservation Easement Oversight Commission within the Department of Regulatory Agencies *before* a tax credit claim can be filed with the Department of Revenue. The new process would provide clearer lines of authority, responsibility, and accountability for decision-making, align decision-making with appropriate areas of expertise, and yield more certainty for landowners when claiming and using the tax credits on their tax returns or selling the tax credit to other taxpayers. The new process would apply to conservation easements donated on or after January 1, 2014.

What Would This Bill Do?

Section 1: The legislative declaration provides context about the intended goals of the new process and requirements.

Sections 2, 3, 4, 5, and 6: These sections make conforming amendments to existing statute to implement the new process. This includes changing the responsibilities of the Conservation Easement Oversight Commission and modifying its membership to include an individual who is competent and qualified to analyze the conservation purpose of conservation easements.

Section 7: This section outlines the new process by which landowners will apply for a tax credit certificate and the authority and responsibilities of the Division of Real Estate and the Conservation Easement Oversight Commission for reviewing tax credit certificate applications for compliance with applicable requirements. Specifically, this section:

- Moves authority and responsibility for determining whether the conservation easement appraisal complies with applicable requirements from the Department of Revenue to the Division of Real Estate.

- Moves authority and responsibility for determining whether the conservation purpose and other aspects of the easement comply with applicable requirements from the Department of Revenue to the Conservation Easement Oversight Commission.
- The Department of Revenue retains authority and responsibility for administering all other aspects of tax credit claims and uses that are not specifically granted to the Division of Real Estate or the Conservation Easement Oversight Commission.
- Sets forth requirements for submitting a complete tax credit certificate application, including the payment of a fee to be established by the Division of Real Estate.
- Establishes a process and time frame for (1) the review of tax credit applications, (2) the communication of potential deficiencies to the landowner, (3) the landowner's ability to submit additional information and documentation to address potential deficiencies, and (4) completing the review and making a final determination on the application.
- Establishes a process by which the landowner may appeal the denial of a tax credit certification application under the Administrative Procedures Act.
- Grants the Division of Real Estate rulemaking authority to implement and administer the new tax credit certificate application process.
- Moves public reporting requirements regarding tax-credit-generating conservation easements from the Department of Revenue to the Division of Real Estate.
- Provides a process by which landowners may request an optional, nonbinding preliminary advisory opinion from the Division of Real Estate and the Conservation Easement Oversight Commission on pending conservation easement transactions.

Section 8: This section establishes the requirement that, for income tax years commencing on or after January 1, 2014, no claim for a state income tax credit is allowed unless a tax credit certificate is issued by the Division of Real Estate in accordance with the requirements of the new tax credit certificate application and review process. This section also makes conforming amendments to existing statute to implement the new process.

Section 9: This section makes conforming amendments to existing statute to implement the new process.

Section 10: This section eliminates reporting requirements that are out of date and duplicative of information that the Division of Real Estate already receives when the conservation easement holders apply for certification.

Section 11: This section authorizes a loan of general fund monies to provide start-up funding for the new process. The loan is to be repaid as fee revenues become available as of January 1, 2014.

Section 12: Specifies the effective date of the bill.

Comments: The Department of Regulatory Agencies, the Department Revenue, and the Conservation Easement Oversight Commission support this bill.